EXPLANATORY MEMORANDUM TO

THE OFFICIAL CONTROLS (AMENDMENT) REGULATIONS 2024

2024 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Baroness Hayman of Ullock, Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs, confirms that this Explanatory Memorandum meets the required standard.

2.2 Fiona James and Deborah Wells, Deputy Directors for Sanitary and Phytosanitary & Imports at the Department for Environment, Food and Rural Affairs confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Anna Molyneux at the Department for Environment, Food and Rural Affairs, email: Anna.Molyneux@defra.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the instrument

What does the legislation do?

4.1 This instrument is necessary to progress the implementation of the Border Target Operating Model[1] ("BTOM").

4.2 This instrument is being made to protect biosecurity and support trade between Great Britain ("GB") and third countries by ensuring that Sanitary and Phytosanitary ("SPS") controls can be applied to goods entering GB in a dynamic way, in response to changing levels of risk to plant, animal and public health through further statutory instruments. It is also needed to facilitate compliance with our international trading obligations to both the EU and other trade partners.

4.3 The powers conferred by the Retained EU (Revocation and Reform) Act 2023 are therefore used to amend pre-existing powers in Regulation (EU) 2017/625 ("the Official Controls Regulation" or "OCR") to ensure that powers are available to implement and update policies underpinning the BTOM in the long term. The majority of amendments made by this instrument, therefore, do not have policy

[1] https://www.gov.uk/government/publications/the-border-target-operating-model-august-2023?utm_source=Defra&utm_campaign=95c319164b-EMAIL_CAMPAIGN_2022_03_04_05_04_COPY_01&utm_medium=email&utm_term=0_067d4a0b11-95c319164b-474697451

impact until the amended powers are exercised at that later date. There are some exceptions to this, including measures to allow diagnostic testing of plants to be undertaken at the BCP and providing for the recovery of cost of debts where fees have not been paid".

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, and Scotland.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, and Scotland. Though there are individual regulations which amend legislation applicable only in each of England, Scotland and Wales, these include regulation 38 which applies to England only, regulations 39 and 40 apply to Wales only and regulation 44, which only applies to Scotland.

5. Policy Context

What is being done and why?

5.1 The BTOM sets out UK Governments plans to implement a global, risk-based approach for SPS controls on imports from our trading partners.

5.2 To date, legislation has delivered two main milestones of the BTOM:

5.3 31 January 2024: The Official Controls (Extension of Transitional Periods) (Miscellaneous Amendments) Regulations 2024 (S.I. 2024/20) introduced the requirement for health certification on imports of medium risk animal products, plants, plant products and high-risk food and feed of non-animal origin from the EU. These Regulations also removed pre-notification requirements for certain plant and plant products from the European Union ("EU") which are being temporarily treated as low risk.

5.4 30 April 2024: The Official Controls (Miscellaneous Amendments) Regulations 2024 S.I. 2024/541) introduced further changes to SPS controls on imports from all countries into GB. These changes introduced a new global risk-based approach to imports of live animals, germinal products, products of animal origin, animal by-products, plants and plant products by enabling them to be categorised on the basis of risk, with controls appropriately weighted against the risks posed both by the commodity and the country of origin. Many of these changes were introduced using temporary powers provided for the creation and operation of the Transitional Staging Period ("TSP"). The Official Controls (Fees and Charges) (Amendment) Regulations 2024 (S.I. 2024/547) enabled competent authorities to administer fees and charges for official controls on SPS goods in a way which reflects the new regime as set out in the BTOM by effectively changing the duty to charge to a power to charge. Finally, the Plant Health (Fees) (England) and Official Controls (Frequency of Checks) (Amendment) Regulations 2024 (S.I.2024/557) supports the implementation of the second milestone of the BTOM by applying risk-based import checks on medium risk plants and plant products from certain countries, including EU member states, Liechtenstein and Switzerland. It also ensures fees charged for checks on goods imported to England reflect the established frequency of checks (Scottish and Welsh Governments laid parallel fees legislation).

5.5 To ensure the enduring legislative framework is in place to progress the implementation of the BTOM as expected by industry and our trading partners, changes are now required to the OCR and other relevant legislation. Proceeding with

BTOM legislation provides flexibility to make future policy and delivery choices on border checks. A new SPS or veterinary agreement will take time to negotiate and implement, so it is right that levers to operate checks as efficiently as possible are in place in the meantime. This instrument, therefore, uses powers conferred by the Retained EU Law (Revocation and Reform) Act 2023 to amend or replace provisions in the Official Controls Regulation and other relevant legislation to:

- Provide a long-term legislative basis for the BTOM beyond reliance on the TSP for relevant goods;
- Ensure that the BTOM can be updated dynamically in response to risk by allowing changes to be made administratively; and
- Provide the legislative basis for further aspects of the BTOM to be delivered including Trusted Trader Schemes.

Providing a long-term basis for the BTOM

5.6 The following amendments ensure powers are in place to update the policies in relation to the BTOM in the long term, removing reliance on temporary powers, such as those connected with the TSP.

5.7 Regulation 3 amends the definition of an "official certificate" in the OCR to include digital documents and adds a definition of 'unique digital identifier' that would allow the use of QR codes. This facilitates fully electronic and/or digital import documentation.

5.8 Regulation 3 also expands the definition of 'documentary check' to include examination by remote or automated means. Regulations 7, 9, 11, 14, 16, 17 and 18, provide flexibility on the location and timing of documentary checks. Regulations 8 and 15 remove the requirement to carry out documentary checks on all imports and expands existing powers to allow the frequency of such checks to be based on risk. Regulation 12 allows full digitalisation of official documents to enable remote documentary checks and access to official documentation using a unique digital identifier.

5.9 Regulations 7 and 14 provide for flexibility on the location of identity and physical checks, so that these may take place away from a BCP, such as at place of destination.

5.10 Regulation 20 removes the need for the exemption from requirement for BCPs to be located in the immediate vicinity of the point of entry to only be available where there are specific geographical constraints.

5.11 The definition of "transit" for the purpose of official controls is amended by regulation 3 in respect of the OCR and regulation 46(3) in respect of Regulation (EU) 2016/2031 (the "Plant Health Regulation"). The new definition is broadened to include the movement of consignments from third countries through GB to Northern Ireland (NI) and the movement of consignments from NI to third countries through GB. This amendment is required to allow reduced controls for goods from the European Union intended for Northern Ireland, in line with the Windsor Framework, and transit controls for non-qualifying Northern Ireland goods passing through GB. Regulation 13 expands existing powers to regulate transits to provide for reduced checks for goods for which GB is not their end destination.

Ensuring the BTOM can be updated dynamically in response to risk

5.12 The following amendments permit changes to be made rapidly to certain conditions for imports of animals and animal products in response to threats to public and animal health in the United Kingdom, such as following an animal disease outbreak or food safety incident overseas, without requiring legislation to be made in those circumstances.

5.13 Regulation 10 makes changes to Article 48 of the Official Controls Regulation. These changes include amendments to provide regulation making powers which would allow changes to rules for bringing or sending animal products, plants, and plant products into Great Britain for personal consumption or use, in response to biosecurity or food safety risks. The amendment provides this by allowing government to determine, administratively, which countries or products are deemed to pose an acceptable risk and therefore subject to 'reduced controls' for these purposes.

5.14 Regulation 10 allows for the categorisation of animals and animal products based on risk and provides the ability to exempt goods categorised as low risk from checks and certification requirements at a BCP and provides that risk levels may be published and managed online by the appropriate authority, rather than set in regulations. Regulation 15 provides scope for rules to specify a range of frequencies to be applied to check rates and provides powers to regulate certain categories of goods listed in Article 47(1). It also provides powers to determine a frequency rate for checks for certain consignments of plants based on aggregated risk.

5.15 Regulations 32-37, 41-43, 45 and 47-48 provide the ability to manage import conditions for animal by-products ("ABP") and certain products of animal origin ("POAO") administratively, allowing for rapid response to emergent risks. This reflects the approach that has successfully been in place for most commercial imports of live animals, germinal products and products of animal origin since July 2022.

Providing the legislative basis to deliver further aspects of the BTOM

5.16 The following amendments are required to provide the legislative basis to introduce aspects of the BTOM which have not yet been delivered, and to continue and improve current provisions that have been temporarily enabled by the TSP.

5.17 Regulations 10 and 23 make changes to Article 48 and Article 80 of the OCR respectively, which will enable the creation and management of requirements, enforcement and charging for any future schemes whereby certain official controls could be disapplied if alternative assurance is provided. This also allows pilots for these schemes to be set out in legislation where required. Regulation 12 amends Article 50 to allow split consignments, to continue to facilitate the Certification Logistics Pilot after the TSP ends. The Certification Logistics Pilot simplifies the certification process for packaged medium risk animal products moving from a consolidation hub in the EU to Great Britain. The pilot has been in operation since 31 January 2024 when documentary checks were introduced for medium-risk goods from the EU and needs to be able to continue for the pilot duration. Further information has been published on gov.uk[2].

5.18 Regulations 10 and 23 also allow for the implementation, including fees, of voluntary programmes for Trusted Traders, such as the Certification Logistics Pilot as detailed in paragraph 5.17.

[2] https://www.gov.uk/guidance/accredited-trusted-trader-scheme-pilot

5.19 The amendment to Article 48 of the OCR, made by Regulation 10, also provides a regulatory power building upon surveillance and audits already in place for imported goods which are not routinely checked at BCPs. These additional powers are designed to make existing powers to carry out controls inland more effective.

5.20 The requirement for trading partners to guarantee they will provide the appropriate authority with up-to-date lists of approved establishments in their territories that comply with import requirements is added to Article 127 of the Official Controls Regulation by regulation 29. The purpose of this amendment is to protect biosecurity and facilitate trade by ensuring border officials have access to up-to-date lists of establishments approved to export to GB and enable Government to take mitigating action against trading partners that fail to provide up-to-date lists.

5.21 Regulations 4, 5, 6, 27, 46 and 50 provide greater flexibility on who can carry out diagnostic tests for the purpose of SPS controls on plants and plant products, such as allowing official plant health officers to carry out diagnostic tests at the BCP instead of testing at official laboratories and therefore reducing the amount of time testing takes for certain pests where appropriate.

5.22 Regulations 30 and 46 extend the powers to make regulations relating to the enforcement of rules relating to SPS goods under the OCR and the Plant Heath Regulation to the policies implemented under changes made by this instrument and instruments exercising these powers, as well as to other SPS legislation. These regulations also provide a power to implement a right of appeal against certain decisions under the OCR in the future. Regulations 24 and 25 expand enforcement powers to allow for debt recovery and collection costs for unpaid fees.

5.23 Regulation 19 changes the duty to designate a BCP to a power to designate by amending Article 59 of the OCR. This provides the competent authorities with greater discretion on whether to designate a BCP providing greater control to align the placement of border control facilities and resources with biosecurity, trade and food security priorities.

What was the previous policy, how is this different?

5.24 Following EU exit, the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1481) introduced a temporary suspension of several OCR requirements for imports from EU member states to allow controls on EU goods to be progressively phased in. Since then, the current regime has been implemented and amended by The Official Controls (Extension of Transitional Periods) (Miscellaneous Amendments) Regulations 2024 (S.I. 2024/20), Official Controls (Fees and Charges) (Amendment) Regulations 2024 (S.I. 2024/547), The Plant Health (Fees) (England) and Official Controls (Frequency of Checks) (Amendment) Regulations 2024 (S.I 2024/557) and The Official Controls (Miscellaneous Amendments) Regulations 2024 (S.I. 2024/541). This instrument makes further changes to assimilated law to allow further benefits of the BTOM to be delivered, providing the legislative basis for the introduction of the Trusted Trader Schemes, diagnostic testing of plants and plant products at the BCP and the audit and surveillance of imported goods which are not routinely checked at a BCP.

5.25 Whilst this SI provides the legislative basis to implement these policies on a long-term basis, the majority of changes made by this instrument do not directly implement any policy, but, rather, ensure that the existing regulation-making powers are updated to enable the policies underpinning the BTOM to be delivered in the longer term.

Further instruments, exercising the amended powers, will be laid at a later date before both Houses.

6. Legislative and Legal Context

How has the law changed?

6.1 The principal legislation governing the controls required on movement into Great Britain of animals, animal products, food, feed and plants is set out in assimilated law, namely the Plant Health Regulation for plant health and the OCR for animal, plant and public health and the additional legislation made under these Regulations.

6.2 Under powers conferred by the European Union (Withdrawal) Act 2018, this assimilated law was amended where necessary, in order to address failures in that law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

6.3 During this process, Annex 6 was inserted into the OCR. This provides for a TSP which temporarily eases the requirement for the performance of official controls in relation to specified categories of plants, animals and other goods imported into Great Britain from relevant third countries, including, primarily, the EU, (also defined in Annex 6). The temporary easements under the TSP have provided time for a new regime and infrastructure to be developed in readiness for checks applying on EU goods.

6.4 Whilst the Official Controls (Miscellaneous Amendments) Regulations 2024 (S.I. 2024/541) and The Official Controls (Extension of Transitional Periods) (Amendment) Regulations 2024 (S.I. 2024/20) implemented the majority of the BTOM in April 2024, this instrument amends the OCR to provide a legislative basis which can be dynamic in response to risk, maintaining animal, plant and public health whilst facilitating trade by streamlining processes at the border.

6.5 The amendments made by this instrument, using powers conferred by sections 14, 15 and 20 of the Retained EU Law (Revocation and Reform) Act 2023, will provide a legislative basis for the implementation of the regime for both EU and Rest of World (RoW) goods.

Why was this approach taken to change the law?

6.6 Because the overarching legislation stems from what was originally an EU Council Regulation, there are no existing enabling powers that would allow the changes necessary to deliver the full policy ambition on a long-term basis. In the absence of primary legislation providing new powers, section 14 of the Retained EU Law Revocation and Reform) Act 2023 can be used to replace those provisions in the assimilated law that need to be delivered for these purposes. That includes replacing and adapting existing regulation-making powers in the assimilated law to these ends as that will enable future changes to be consistent with that updated framework.

7. Consultation

Summary of consultation outcome and methodology

7.1 A period of engagement on the draft BTOM ran for 6 weeks from 5 April 2023. The feedback from this engagement was collated, considered and, where appropriate, adopted for the final BTOM publication on 29 August 2023.

7.2 This was followed by a 12-day stakeholder engagement exercise which took place in the run up to the introduction of the second major BTOM milestone on the 30 April. This exercise requested the views of over 50 key stakeholders in the SPS sector on the proposed legislative changes within The Official Controls (Miscellaneous Amendments) Regulations 2024 (S.I. 2024/541).

7.3 In May 2024, a further targeted stakeholder engagement exercise took place, where Defra sought the views of over 50 key stakeholders in the SPS sector on the proposed measures in this SI.

7.4 Defra received four responses during the engagement window. Responses were generally supportive of the proposed legislative changes and that a permanent legislative basis is required to replace the TSP.

7.5 Stakeholders queried and offered suggestions regarding how the powers amended by this instrument is exercised in future. Defra will continue to engage with industry on how these powers will be exercised at a later date.

7.6 The Scottish and Welsh governments have been consulted on the proposed amendments and are content, noting the importance of maintaining a consistent approach to SPS controls across GB. The BTOM was developed in co-operation with the Scottish and Welsh Governments, recognising devolved competence in the policy areas of biosecurity and food safety. The Scottish and Welsh Governments support the objective of removing unnecessary barriers to trade with the EU, they also want robust biosecurity and public health measures to be in place and support the continued operation of BTOM controls and proceeding with legislation to optimise their delivery.

8. Applicable Guidance

8.1 Guidance was updated in line with changes made to import controls by earlier statutory instruments. An overview of the BTOM and the requirements at the border can be found on gov.uk[3].

8.2 There is no specific guidance necessary for this instrument as the amendments do not generate changes to the controls applied to SPS goods until such a time when regulation-making powers are exercised. Further statutory instruments may be laid at a later date, using the regulation making powers in the OCR, as amended by this instrument. Where these statutory instruments have impacts on businesses or enforcement bodies, guidance will be amended and published as necessary.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument as most of the changes made have no impact on businesses, as they do not implement new policy, but ensure powers are in place to update the policies in relation to the BTOM in the long term.

9.2 Some of the changes made by this instrument, however, do implement policy. These changes include:

[3] https://www.gov.uk/government/publications/border-target-operating-model-information-leaflets-for-businesses

- providing for official plant health officers to carry out diagnostic tests at the BCP instead of testing at official laboratories; and
- the expansion of enforcement powers to allow recovery of cost of debts and collections where fees have not been paid.

9.3 As the enforcement activities affected by the expansion of enforcement powers are directly related to the provision of fees/charges, this change is out of scope of the Better Regulation Framework and therefore an impact assessment was not required.

9.4 For the provisions allowing official plant health officers to carry out diagnostic tests at BCPs instead of testing at official laboratories, the total estimated indirect impact to UK businesses consist of savings of up to £1.2m against the counterfactual scenario of doing nothing (i.e. if the TSP ends) and smaller savings when compared to the previously proposed SPS regime which was planned for implementation in July 2022. This consisted of time savings gained by quicker test results and savings from reduction in perishability impacts. No formal Impact Assessment has been produced for these provisions, however, as the impacts to UK businesses are considered indirect as this instrument amends powers for official plant health officers, giving them the flexibility to carry out diagnostics at the border.

9.5 Further statutory instruments will be laid at a later date using the regulation making powers in the OCR, as amended by this instrument. Where these SIs have impacts on businesses, analysis will be conducted as appropriate and published when available.

Impact on businesses, charities and voluntary bodies

9.6 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument does not implement any significant changes to existing SPS controls.

9.7 The legislation does not impact small or micro businesses.

9.8 The impact on the public sector is related to the expansion of enforcement powers to allow recovery of cost of debts and collections where fees have not been paid. However, Port Health Authorities will deliver the control regime under a cost recovery model so the net effect on the public sector is expected to be small.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to develop a performance management framework once the BTOM is fully operational. As a new SPS or veterinary agreement with the EU will take time to negotiate and then to implement, this legislation will be reviewed as appropriate.

10.2 As this instrument is made under the relevant European Union Acts (as defined at 13.1), no review clause is required.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 There are some matters which Parliament may have interest. These principally relate to the sequencing of this instrument with others to deliver the BTOM, the extension of fees and charges for importers, and how this instrument relates to the manifesto commitment to seek a veterinary agreement with the EU.

11.2 In order to give businesses enough time to prepare and supply chains to adjust to the introduction of the new regime of controls set out in the BTOM, a phased approach is being taken. To achieve this, a sequencing of statutory instruments is required. This instrument is therefore one of a series of statutory instruments being introduced to implement the BTOM. This instrument follows the introduction of The Official Controls (Extension of Transitional Periods) (Miscellaneous Amendments) Regulations 2024 (S.I. 2024/20); Official Controls (Fees and Charges) (Amendment) Regulations 2024 (S.I. 2024/547); The Plant Health (Fees) (England) and Official Controls (Frequency of Checks) (Amendment) Regulations 2024 (S.I. 2024/557); and The Official Controls (Miscellaneous Amendments) Regulations 2024 (S.I. 024/541). Further statutory instruments will be required to implement future BTOM milestones.

11.3 The extension of fees and charges for importers provided for by regulations 24 and 25 of this instrument is intended to provide greater flexibility on the composition of fees and charges, whilst maintaining the requirement to only recover costs. The instrument does not directly raise fees or charges applicable to importers but extends the scope of the power to charge to allow recovery of cost of debts and collections where fees have not been paid thereby delivering full cost recovery. This amendment is required to allow competent authorities to recover costs for items that are not currently specified within existing legislation.

11.4 The Government is committed to removing trade barriers, including through seeking to negotiate a veterinary/SPS agreement with the EU to boost jobs, economic growth and UK-EU trade, but this will take time to negotiate. This instrument is a necessary step to implement the policy that industry has been preparing for, and ensure biosecurity is maintained between now and an agreement being reached.

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary of State, at the Department for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

"In my view the provisions of the Official Controls (Amendment) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is made under sections 14, 15 and 20 of the Retained EU Law (Revocation and Reform) Act 2023 and therefore relates to the reform of assimilated law. This instrument uses the Retained EU Law (Revocation and Reform) Act 2023 to amend enabling powers in assimilated law to ensure that the BTOM can be updated over time in response to risk. Without this instrument, the full benefits of the BTOM could not be delivered.